DOCUMENT RESUME

ED 261 691 IR 051 262

AUTHOR Becker, Gary H.
TITLE The Copyright Game. An Information Exchange and Strategy Session. Resource Guide. Revised.
PUB DATE [82]
NOTE 13p.
AVAILABLE FROM Gary H. Becker, 1770 Blackmon Court, Longwood, FL 32779 ($5.73 postpaid).
PUB TYPE Guides - Non-Classroom Use (055) -- Legal/Legislative/Regulatory Materials (090) -- Reference Materials - General (130)

EDRS PRICE MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS Audiodisc Recordings; Audiotape Recordings; Audiovisual Aids; Computer Software; *Copyrights; Educational Legislation; *Federal Legislation; *Federal Regulation; Guidelines; *Instructional Materials; Legal Responsibility; Library Materials; Music; Programing (Broadcast); *Reprography
IDENTIFIERS *Copyright Law 1976; *Software Copying

ABSTRACT

An overview of the Copyright Law (Public Law 96-517) and highlights of those sections most applicable to education are presented in this resource guide. Specific references are made to both print and nonprint materials and guidelines are provided to assist in determining whether the use of material or its reproduction might constitute an infringement of the law. The document comprises two updates. Update One, dated 1977, covers: Highlights of the Law; Do's, Don'ts and Maybes?; Classroom Copying; Library Photocopying; Library Photocopying for Reserve Use; Guidelines for Educational Uses of Music; and Reproduction of Audio-Visual Works. Update Two, dated August 1982, covers the status of off-air recording rights and the duplication of computer software. Reference citations to the law are provided as well as suggested formats for an institutional policy statement and a sample permissions letter. (Author/THC)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED261691

U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUCATION
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

☒ This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official NIE position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL IN MICROFICHE ONLY HAS BEEN GRANTED BY

Gary H. Becker

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

The Copyright Game

Resource Guide

IR051262

The Copyright Game

an Information Exchange and Strategy session

featuring

Gary H. Becker

© opyright and You
Update No. 1

1977
by Gary H. Becker
reprinted w/permission WWCSD

SECTION I

Highlights of the Law

Summary

Effective Date of New Law: January 1, 1978 with 3 year statue of limitations until January 1, 1981.

Duration of Copyright: Old - 28 years and renewal of 47 years
New - Life of author and 50 years

Scope of Copyrighted Works: Definition: Any tangible medium of expression, now known or later developed, which can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device....

Fair Use: Factors-

1. Purpose and Character of use
2. Nature of copyrighted work
3. Amount of portion used in relation to whole
4. Effect on potential market for or value of copyrighted work

Guidelines- Single Copy:

1. Chapter of a book
2. Article from periodical or newspaper
3. Short story essay
4. Short poem

Multiple Copies for Classroom Use:

1. Article less than 2,500 words or excerpt not more than 1,000 words or 10% of whole, whichever is less
2. Copying done on initiative of teacher when time for copyright permission unreasonable
3. Copying for one course only
   a. One work from single author
   b. No more than 3 authors from collective work
   c. No more than 9 instances of copying in one school term
4. No copying of consumable works, ie. workbooks & standardized tests
5. Same item not reproduced term to term
6. No charge made to students beyond actual photocopying

Library Photocopying: (Copies & Phonorecords) - Exempt Conditions:

1. Reproduction of unpub'ished works for purpose of preservation and security
2. Reproduction for purpose of replacement of damaged, deteriorating, lost or stolen copies if replacements cannot be obtained at a fair price
3. Reproduction for patron of 1 single copy of one article or small part of work to become property of patron for purpose of study or research. Must display copyright warning.

©1977 Gary H. Becker
Reproduction of any portion of the material herein is prohibited without prior permission of the author.
Revised, 1982.

4. Reproduction of entire work if cannot be obtained at fair price
   a. Copy becomes property of user for study and research
   b. Copyright warning displayed
5. Inter-library loans

NOTE: All preceding for isolated and unrelated reproduction on different occasions. Systematic, single reproduction prohibited!!!!

Library Photocopying: RIGHTS OF REPRODUCTION DO NOT APPLY TO:

1. Musical works
2. Pictorial, graphic or sculptural works
3. Motion picture or other audiovisual works (exeption: news program)

Secondary Transmissions: Allowable if:

1. Part of systematic instructional activity
2. Performance related to teaching content
3. Transmission designed for classrooms or other areas of instruction
4. Transmission directed to location of people with handicaps or disabilities

SECTION II

By Gary H. Becker

Do's, Don'ts and Maybes?

This set of guidelines is in response to a number of questions generated by teachers and administrators concerned about the implications of the new Copyright Law. Please understand that the following are only guidelines, some of which will be modified by court decisions and legislative action in the future. The following are based upon the law itself outlined on the cover attachment entitled Copyright and You! Please excuse the length, but I hope it answers many of your questions.

Classroom Copying

You May Reproduce Single Copies of the Following:

1. A chapter of a book
2. An article from a periodical or newspaper
3. A short story, short essay or short poem, whether or not from a collective work
4. A chart, graph, diagram, drawing, cartoon or picture from a book, periodical or newspaper

You May Reproduce Multiple Copies of the Following:

1. A complete poem if less than 250 words
2. An excerpt from a longer poem, but not to exceed 250 words
3. A complete article, story or essay of less than 2,500 words or an excerpt from a larger printed work which must not exceed 10% of the whole, whichever of the preceding is less
4. One chart, graph, diagram, drawing, cartoon or picture per book or periodical issue
5. Special works combining prose, poetry and illustrations, but limited to no more than 10% of the total
6. All preceding copying must bear the copyright notice

Limits To Preceding:

1. Copying is made for one course only
2. One work from a single author
3. No more than three authors from a collective work
4. No more than 9 instances of such multiple copying in one class term
5. Copying shall not be used to create or replace or substitute for anthologies or collective works
6. Copying of "consumable" works ie. workbooks, exercises, standardized tests, test booklets and answer sheets is absolutely prohibited

Note: The limitations stated above do not apply to current news periodicals, newspapers and current news sections of other periodicals.

Library Photocopying

In Part I of Copyright and You, reference is made to special exemptions that apply to Libraries and Library-Media Centers. In reference to section 5 which allows libraries to reproduce an article from a periodical for inter-library loan, the following restriction applies:

1. More than six copies of an article from a periodical (not a single issue, but over a year) shall be considered excessive and interpreted as an evasion of purchase of said periodical.

Please also note that the library media specialist and his/her staff are protected from copyright infringement violation by users of equipment under their jurisdiction if every duplicating machine is posted with a copyright warning to the effect that the use of this machine to reproduce copyrighted material beyond the legal fair use guidelines is punishable by fine and/or imprisonment of the user.

Library Photocopying For Reserve Use

Library photocopying for reserve use may be permissible if all of the four Section 107 Fair Use factors are met.

- Purpose and Character of Use
- Nature of the Work
- Amount and substantiality of the portion used
- Effect upon the potential market for the work

Libraries that carefully examine their reserve requests, monitor the volume of reproduction, keep the quantities of copies to a minimum, and only reproduce small sections of a total work will probably fall under the category of Fair Use. When feasible, prior copyright permission from the source would help to solidify one's legal position.

This doesn't negate the Section 107 guidelines for library photocopying whereby individual requests for copies of material for scholarly research may be made as long as they become the property of the user.

In addition, one must comply with any court decisions or changes in the law that might pertain to such use.

NOTE: Reference for preceding section of possible reserve uses may be found in the American Association of University Professors' Bulletin, September 1978 by John C. Stedman, emeritus professor of law at the University of Wisconsin at Madison.

Guidelines for Educational Uses of Music

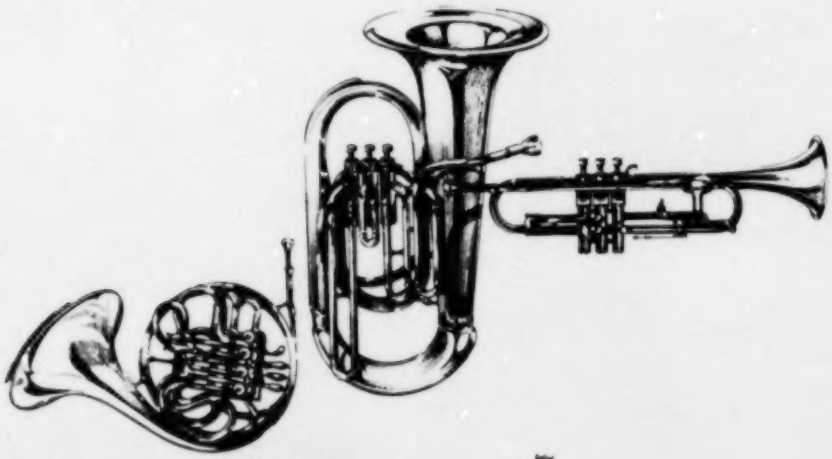
Due to the complexity of this area, as well as the specificity, I have reproduced this section of the law in its entirety.

Permissible Uses:

1. Emergency copying to replace purchased copies which for any reason are not available for an imminent performance provided purchased replacement copies shall be substituted in due course.
2. (a) For academic purposes other than performance, multiple copies of excerpts of works may be made, provided that the excerpts do not comprise a part of the whole which would constitute a performable unit such as a section, movement or aria, but in no case more than 10% of the whole work. The number of copies shall not exceed one copy per pupil.
   (b) For academic purposes other than performance, a single copy of an entire performable unit (section, movement, aria, etc.) that is, (1) confirmed by the copyright proprietor to be out of print or (2) unavailable except in a larger work, may be made by or for a teacher solely for the purpose of his or her scholarly research or in preparation to teach a class.
3. Printed copies which have been purchased may be edited or simplified provided that the fundamental character of the work is not distorted or the lyrics, if any, altered or lyrics added if none exist.
4. A single copy of recordings of performances by students may be made for evaluation or rehearsal purposes and may be retained by the educational institution or individual teacher.
5. A single copy of a sound recording (such as a tape, disc or cassette) of copyrighted music may be made from sound recordings owned by an educational institution or an individual teacher for the purpose of constructing aural exercises or examinations and may be retained by the educational institution or individual teacher. (This pertains only to the copyright of the music itself and not to any copyright which may exist in the sound recording.)

Prohibitions:

1. Copying to create or replace or substitute for anthologies, compilations or collective works.
2. Copying of or from works intended to be "consumable" in the course of study or of teaching such as workbooks, exercises, standardized tests and answer sheets and like material.
3. Copying for the purpose of performance, except as in A (1) above.
4. Copying for the purpose of substituting for the purchase of music, except as in A (1) and A (2) above.
5. Copying without inclusion of the copyright notice which appears on the printed copy.



Reproduction of Audio-Visual Works

This entire area was not resolved to the satisfaction of the legislative committee formulating the new law. However, it was agreed that it would fall under the four categories of Fair Use outlined in Section I of Copyright and You. Court decisions would take into account all four factors in deciding a violation of copyright. However, interpretation at this time finds the following to be permissible.

Permissible Uses:

1. Creating a series of slides from multiple sources, such as magazines, books, encyclopedias, etc. as long as one doesn't exceed 10% of the photographs in any one source, unless the source specifically prohibits any photographic reproduction.
2. Creating a single overhead transparency from a single page of a consumable workbook.
3. Creating multiple overhead transparencies from a variety of sources, not exceeding 10% of the total content of any one source, unless this type of reproduction is specifically prohibited.
4. Excerpting sections from a filmstrip to create slides as long as one doesn't exceed 10% of the entire work or excerpt the very creative essence of the work.
5. Reproducing selective slides from a slide series as long as one doesn't exceed 10% of the entire production, excerpt the very creative essence of the work or violate a specific prohibition for this type of reproduction.
6. Excerpting sections of a 16 m.m. film to be included in a locally produced videotape, not to be shown over cable television, not to exceed 10% of the whole and not excerpting the essence of the work.
7. Off-air videotaping of instructional television programs cleared for copyright usage.
8. Note: It is permissible to duplicate visual or audio materials of a non-dramatic literary work in order to provide materials for the blind or deaf. In addition, these and other copyrighted materials may be legally transmitted to blind or deaf individuals via cable systems.

Prohibitions:

1. No duplication of cassette tapes unless reproduction rights were given at time of purchase.
2. *No reproduction of musical works (i.e. records) or converted into another form for use (i.e. tapes).
3. No off-air videotaping of programs other than those cleared for instructional television use and so indicated by the local educational television channel.
4. No reprodiction of "ditto masters" produced commercially, individually, in sets or as part of multi-media kits if they are available for sale separately.
5. No reproduction of any audio-visual work in its entirety.
6. No conversion of one media format into another, ie. 16 m.m. film to videotape.
7. No narrating entire stories onto audio tape.

*Note: Protection under copyright is only for sounds as they exist. This doesn't prevent a performance or recording in which sounds are imitated. Infringement occurs when all or a substantial portion of the actual sounds are reproduced. Mere imitation doesn't constitute copyright infringement.

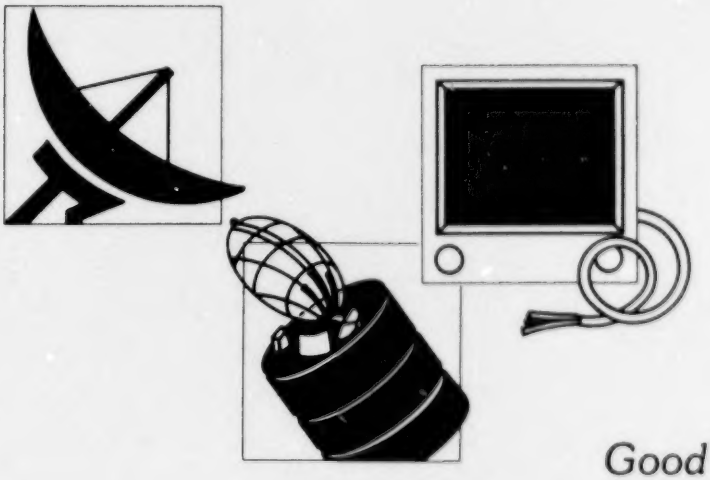
If the preceding still leaves you somewhat unclear, you are not alone. The copyright office in Washington sympathizes with our plight. Specific guidelines in many areas are still being developed ie. uses of off-air videotaping, computer technology, etc.

If you have any questions, please contact me. I'll be glad to try and give you an opinion based on current information. In addition, I will forward any unanswerable questions in areas for which you have concern to the General Counsels Office for Copyright in Washington.

Gary H. Becker
Coordinator/Consultant
Instructional Computer Services
Seminole County Schools
1211 Mellonville Avenue
Sanford, Florida 32771
305-322-1252

Reference: Please note that if you feel the necessity to refer to a specific section of the law, those areas that specifically have implications in the field of education are:

Section 107 - Limitations on exclusive rights: Fair use
Section 108 - Limitions on exclusive rights: Reproduction by libraries and archives
Section 110 - Limitions on exclusive rights: Exemption of certain performances and displays
Section 111 - Limitions on exclusive rights: Secondary transmission
Section 112 - Limitions on exclusive rights: Ephemeral recordings
Section 114 - Scope of exclusive rights in sound recordings



Good Luck!

© opyright and You Update No. 2

August, 1982
by Gary H. Becker
reprinted w/permission WWCSD

Introduction

The delay in issuing a second Update is related to the fact that there have been few changes in the law affecting educators and that court decisions, to this point, have upheld the law as it now stands. However, there have been some developments related to the following areas of Off-Air Recording Rights and Duplication of Computer Software.

Status of Off-Air Recording Rights

On October 14, 1981, Senator Robert Kastenmeier read into the Congressional Record a set of Guidelines for Off-Air Recording of Broadcast Programming for Educational Purposes which were the result of negotiations between producers and educators. Senator Kastenmeier had been chairing a subcommittee studying this issue for two years, and even though several minority letters in opposition to the guidelines were included in the Congressional Record, the committee's concensus was the following:

1. The guidelines were developed to apply only to off-air recording by non-profit, educational institutions.
2. A broadcast program may be recorded off-air simultaneously with broadcast transmission (including cable transmission) and retained by a non-profit educational institution for a period not to exceed the first forty-five (45) consecutive calendar days after the date of recording. Upon conclusion of this period, all recordings must be erased or destroyed.
3. Even though the programs may be held for (45) days, they may only be used once by individual teachers in the cause of relevant teaching activities, and repeated only once when instructional reinforcement is necessary, during the first ten (10) consecutive school days in the forty-five (45) day calendar retention period.

However, once an institution begins to make exceptions such as:

1. Using programs for instruction after the (10) day use period, as long as they are there for (45) days anyway or
2. Holding programs for instruction for several weeks because the unit incorporating those concepts in the program are not taught until then or
3. Holding the program indefinitely for repeat use because it is so good or
4. An unscheduled interruption prevented its use within the (10) day use period so it is used beyond that period or
5. Any other educational rationale you could generate.

You are then definitely leaving yourself and your institution open for an infringement suit.

© 1982 Gary H Becker
Reproduction of any portion of the material herein is prohibited without prior permission of the author.

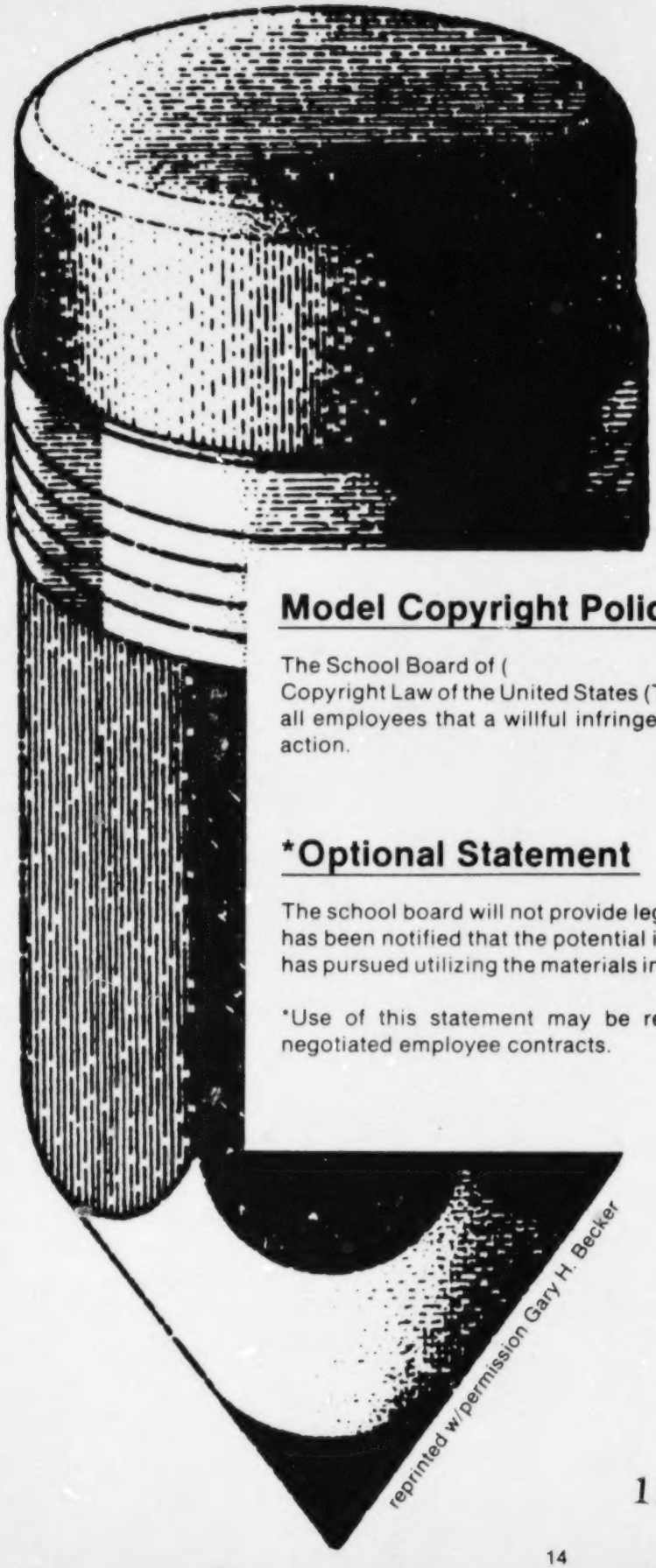
Duplication of Computer Software

On December 12, 1980, by Public Law 96-517, Section 117 of the Copyright Law was amended. The following highlights the changes that were incorporated.

1. A definition of a "computer program" was inserted and is defined as " a set of statements or instructions to be used directly in a computer in order to bring about a certain result."
2. The *owner* of a copy of a computer program is not infringing on the Copyright by making or authorizing the making of another copy or adaptation of that program *if* the following criteria are met.
   a. That the new copy or adaptation is created in order to be able to use the program in conjunction with the machine and it is used in no other manner.
   b. That the new copy or adaptation is for *archival* purposes only and that all archival copies are destroyed in the event that continued possession of the computer program should cease to be rightful.
   c. Any copies prepared or adapted may not be leased, sold or *otherwise transfered* without the authorization of the copyright owner.

Intent Of The Preceding

The changes indicated were incorporated into the Copyright Law in order to allow an individual or institutional owner of a program to legally be able to modify or adapt a program to meet local needs and make a copy of such program to use on their machine. It also was to allow the creation of one archival or protection copy, to be held in case the working copy is destroyed or no longer functions. However, the law does not permit continuing to generate more replacement copies from the archival copy. The archival copy is there for protection, while ordering a replacement for the defective operational copy. Any copies made, for either archival or adaptation purposes, cannot be sold, leased, given away or otherwise transferred without prior permission of the Copyright owner. An educational institution cannot make an adaptation of a program to meet local needs and then make multiple copies for distribution throughout the institution.



Model Copyright Policy Statement

The School Board of ( ), in recognizing the importance of the Copyright Law of the United States (Title 17, United States Code) hereby notifies all employees that a willful infringement of the law may result in disciplinary action.

*Optional Statement

The school board will not provide legal support in such a case where the person has been notified that the potential infringement existed and the individual still has pursued utilizing the materials in such a manner as to result in infringement.

*Use of this statement may be restricted by state laws, local policies or negotiated employee contracts.

reprinted w/permission Gary H. Becker

Internal Request for Authorization
To Duplicate Copyrighted Material
Wayne-Westland Community Schools

Department of Information Services
36745 Marquette
Westland Michigan 48185
(313) 595-2125

Division of General Administration

TO: Date _____
Firm _____
Address _____
_____

FROM:

School/District _____

Department _____

Telephone _____

Person making request _____ Title _____

We are requesting authorization to duplicate the following copyrighted material:

Title _____
Author _____
Subject _____
Medium _____
Rationale _____
_____

Number of copies to be made: _____

Copy medium: _____

Use of copies: _____

Anticipated date of first use: _____

Distribution of copies: _____

. . . . . .

PRODUCER REPLY:

Permission: ☐ granted ☐ denied

Details/Restrictions: _____
_____

Signature _____

Title _____ Date _____

ROUTE TO: Information Services, WWCSD
White - Information Services Yellow-Producer Pink-Originator